

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 4:08-00207 ERW

FRANK L. ZERJAV, SR., FRANK L.
ZERJAV, JR., ZERJAV & COMPANY,
L.C., ZERJAV & COMPANY, P.C., and
ADVISORY GROUP USA, L.C.,

Defendant.

**MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL COMPLIANCE
WITH NEUTRAL MONITOR AND STIPULATED ORDER [Doc. 213]**

COMES NOW, Neil J. Bruntrager, attorney for the Defendants, and hereby prays that this Honorable Court deny Steven V. Stenger's Motion to Compel Compliance with Neutral Monitor and Stipulated Order [Doc. 213]. In support of the Memorandum in Opposition, counsel states as follows:

1. On March 26, 2010, this Court entered a Stipulated Order providing that a neutral monitor be appointed to inspect and review ten (10) tax returns prepared by the Defendants to ensure compliance with the Order and that the Defendants bear the costs of the neutral monitor;

2. On December 30, 2010, the Court entered an Order appointing Steven V. Stenger, Esq., C.P.A. as the Neutral Monitor with the proviso that "[h]is compensation will be fixed at the rate previously agreed by the parties and paid in accordance with the parties' prior agreement";

3. On October 21, 2011, Steven V. Stenger corresponded with defense counsel

concerning the fees that would be payable to the neutral monitor and tendered a fee agreement for execution by the defendant. In the letter, which is attached to Steven Stenger's Motion to Compel, no firm date was provided for the Defendants to return the agreement with the retainer;

4. On November 23, 2011, Counsel conferred with the Neutral Monitor and the Defendants had not forwarded the executed agreement. During this conversation, an agreement was made to reduce the retainer to five thousand (\$5,000.00) dollars with the understanding that it would be provided within a reasonable time period;

5. At the conclusion of the discussion, Defendant's counsel, had the belief that Steven Stenger was going to forward an amended fee agreement for the parties to execute;

6. On December 4, 2011, Steven Stenger advised counsel through an unused e-mail address that is not routinely monitored at this time, that if the \$5,000.00 retainer was not received by December 7, 2011, that the Neutral Monitor would retract his offer for the reduced retainer and would insist upon the \$10,000.00 retainer;

7. Counsel for Defendants was unaware of Steven Stenger's demand for payment of the retainer by December 7, 2011, until receipt of the Motion to Compel Compliance with Neutral Monitor and Stipulated Order [Doc. 213], which was filed on December 16, 2011;

8. Counsel has conferred with Defendant Frank L. Zerjav, Sr., about forwarding a \$10,000.00 retainer to the Neutral Monitor. Defendant Zerjav is adamant that due to the current business climate, he is unable to pay a retainer of \$10,000.00 at this time;

9. Defendant Zerjav has informed counsel that he would be able to pay a retainer

of \$5,000.00 by December 31, 2011.

WHEREFORE, Counsel for the Defendants, prays that this Honorable Court enter an Order denying the Neutral Monitor's Motion to Compel Compliance with Neutral Monitor and Stipulated Order [Doc. 213], and direct the defendants to pay the reduced retainer of \$5,000.00 by December 31, 2011.

Respectfully submitted,

BRAUNTRAGER & BILLINGS, P.C.

/s/ Neil J. Bruntrager

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December 2011 the foregoing **Memorandum In Opposition To Motion To Compel Compliance With Neutral Monitor And Stipulated Order [Doc. 213]** was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Neil J. Bruntrager